

Message Text

PAGE 01 STATE 231123

46

ORIGIN DHA-02

INFO OCT-01 IO-13 ISO-00 SS-15 PM-04 EB-07 AF-08 ARA-06

EA-07 EUR-12 NEA-10 AID-05 H-02 SP-02 L-03 SIG-01

IGA-02 MC-02 CIAE-00 INR-07 NSAE-00 NSC-05 PA-01

PRS-01 USIA-06 ACDA-07 ORM-02 TRSE-00 OMB-01 COME-00

ERDA-05 NRC-05 SCA-01 CIEP-01 CEA-01 STR-04 /149 R

DRAFTED BY D/HA:HKHILL:DI

APPROVED BY T - MR. JORDAN

D/HA:MR. WILSON

PM - MR. ERICSON (DRAFT)

EB - MR. BOEKER (DRAFT)

AF - MR. LEWIS (DRAFT)

ARA - MR. LISTER (DRAFT)

EA - MR. MARTENS (DRAFT)

EUR - MR. GOOTT (DRAFT)

NEA - MR. DUBS (DRAFT)

IO - MR. BAKER (DRAFT)

AID/GC - MR. ESPINOSA (DRAFT)

H - MS. SWIFT (DRAFT)

S/P - MS. VOGELGESANG (DRAFT)

L/HR - MR. RUNYON (DRAFT)

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S/S - MR. BRIDGES

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TO ALL DIPLOMATIC AND CONSULAR POSTS PRIORITY

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PAGE 02 STATE 231123

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C O N F I D E N T I A L STATE 231123

INFORM CONSULS

E.O. 11652:GDS

TAGS: SHUM, PFOR, PINS, PINT, PORC, EAID, EFIN

SUBJECT: GUIDANCE ON DISCRIMINATION PROVISIONS OF NEW
SECURITY ASSISTANCE LEGISLATION

REF: STATE 231122

FOR AMBASSADORS, MAAG CHIEFS AND POLADS

1. BEGIN SUMMARY: REFTEL CONTAINS GUIDANCE AND TEXT OF HUMAN RIGHTS PROVISIONS OF INTERNATIONAL SECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT OF 1976, WHICH PRESIDENT FORD SIGNED INTO LAW JUNE 30. SAME ACT IN SECTION 302 STATES SIMILAR POLICY AGAINST ASSISTANCE, SALES, CREDITS OR GUARANTIES TO OR FOR FOREIGN COUNTRIES WHICH PREVENT ANY UNITED STATES PERSON FROM PARTICIPATING IN SUCH ASSISTANCE OR SALES TRANSACTIONS BY DISCRIMINATING ON THE BASIS OF RACE, RELIGION, NATIONAL ORIGIN OR SEX. THE ACT ESTABLISHES REPORTING REQUIREMENTS AND PROVIDES A PROCEDURE FOR RESTRICTING OR TERMINATING TRANSACTIONS. POSTS IN COUNTRIES WITH WHICH U.S. HAS SECURITY ASSISTANCE PROGRAMS ARE REQUESTED ALSO TO INFORM HOST GOVERNMENTS OF THESE PROVISIONS AT A LEVEL DEEMED APPROPRIATE. REPORT REACTIONS IF ANY AND ANY INFORMATION NOT

PREVIOUSLY REPORTED ON GENERAL SITUATION CASES WHICH MAY FALL WITHIN THE PURVIEW OF THESE PROVISIONS BY SEPTEMBER 30, NEGATIVE REPORTS REQUESTED. POSTS IN COUNTRIES WITH WHICH U.S. HAS NO SECURITY ASSISTANCE PROGRAM MAY CONSIDER THIS MESSAGE AS INFORMATION ONLY, BUT MAY INFORM HOST GOVERNMENTS OF DISCRIMINATION PROVISIONS OF LEGISLATION AT THEIR DISCRETION. END
CONFIDENTIAL

PAGE 03 STATE 231123

SUMMARY.

2. TEXT OF SECTION 302(A) OF THE INTERNATIONAL SECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT OF 1976:

-----"PROHIBITION AGAINST DISCRIMINATION"

-- "SEC. 302(A) SECTION 505 OF THE FOREIGN ASSISTANCE ACT OF 1961 IS AMENDED BY ADDING AT THE END THEREOF THE FOLLOWING NEW SUBSECTION:

-- "(G)(1) IT IS THE POLICY OF THE UNITED STATES THAT NO ASSISTANCE UNDER THIS CHAPTER SHOULD BE FURNISHED TO ANY

FOREIGN COUNTRY, THE LAWS, REGULATIONS, OFFICIAL POLICIES, OR GOVERNMENTAL PRACTICES OF WHICH PREVENT ANY UNITED STATES PERSON (AS DEFINED IN SECTION 7701(A)(30) OF THE INTERNAL REVENUE CODE OF 1954) FROM PARTICIPATING IN THE FURNISHING OF DEFENSE ARTICLES OR DEFENSE SERVICES UNDER THIS CHAPTER ON THE BASIS OF RACE, RELIGION, NATIONAL ORIGIN, OR SEX.

-- "(2)(A) NO AGENCY PERFORMING FUNCTIONS UNDER THIS CHAPTER SHALL, IN EMPLOYING OR ASSIGNING PERSONNEL TO PARTICIPATE IN THE PERFORMANCE OF ANY SUCH FUNCTION, WHETHER IN THE UNITED STATES OR ABROAD, TAKE INTO ACCOUNT THE EXCLUSIONARY POLICIES OR PRACTICES OF ANY FOREIGN GOVERNMENT WHERE SUCH POLICIES OR PRACTICES ARE BASED UPON RACE, RELIGION, NATIONAL ORIGIN, OR SEX.

-- "(B) EACH CONTRACT ENTERED INTO BY ANY SUCH AGENCY FOR THE PERFORMANCE OF ANY FUNCTION UNDER THIS CHAPTER SHALL CONTAIN A PROVISION TO THE EFFECT THAT NO PERSON, PARTNERSHIP, CORPORATION, OR OTHER ENTITY PERFORMING FUNCTIONS PURSUANT TO SUCH CONTRACT, SHALL, IN EMPLOYING OR ASSIGNING PERSONNEL TO PARTICIPATE IN THE PERFORMANCE OF ANY SUCH FUNCTION, WHETHER IN THE UNITED STATES OR ABROAD, TAKE INTO ACCOUNT THE EXCLUSIONARY POLICIES OR PRACTICES OF ANY FOREIGN GOVERNMENT WHERE SUCH POLICIES OR PRACTICES ARE BASED UPON RACE, RELIGION, NATIONAL ORIGIN, OR SEX.

CONFIDENTIAL

PAGE 04 STATE 231123

-- "(3) THE PRESIDENT SHALL PROMPTLY TRANSMIT REPORTS TO

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE CHAIRMAN OF THE COMMITTEE ON FOREIGN RELATIONS OF THE SENATE CONCERNING ANY TRANSACTION IN WHICH ANY UNITED STATES PERSON (AS DEFINED IN SECTION 7701(A)(30) OF THE INTERNAL REVENUE CODE OF 1954) IS PREVENTED BY A FOREIGN GOVERNMENT ON THE BASIS OF RACE, RELIGION, NATIONAL ORIGIN, OR SEX, FROM PARTICIPATING IN THE FURNISHING OF ASSISTANCE UNDER THIS CHAPTER, OR EDUCATION AND TRAINING UNDER CHAPTER 5, TO ANY FOREIGN COUNTRY. SUCH REPORTS SHALL INCLUDE (A) A DESCRIPTION OF THE FACTS AND CIRCUMSTANCES OF ANY SUCH DISCRIMINATION (B) THE RESPONSE THERETO ON THE PART OF THE UNITED STATES OR ANY AGENCY OR EMPLOYEE THEREOF, AND (C) THE RESULT OF SUCH RESPONSE, IF ANY.

-- "(4)(A) UPON THE REQUEST OF THE COMMITTEE ON FOREIGN RELATIONS OF THE SENATE OR THE COMMITTEE ON INTERNATIONAL RELATIONS OF THE HOUSE OF REPRESENTATIVES, THE PRESIDENT SHALL, WITHIN 60 DAYS AFTER RECEIPT OF SUCH REQUEST, TRANSMIT TO BOTH SUCH COMMITTEES A

STATEMENT, PREPARED WITH THE ASSISTANCE OF THE
COORDINATOR FOR HUMAN RIGHTS AND HUMANITARIAN AFFAIRS,
WITH RESPECT TO THE COUNTRY DESIGNATED IN SUCH REQUEST,
SETTING FORTH--

-- "(I) ALL THE AVAILABLE INFORMATION ABOUT THE
EXCLUSIONARY POLICIES OR PRACTICES OF THE GOVERNMENT
OF SUCH COUNTRY WHEN SUCH POLICIES OR PRACTICES ARE
BASED UPON RACE, RELIGION, NATIONAL ORIGIN, OR SEX AND
PREVENT ANY SUCH PERSON FROM PARTICIPATING IN A TRANS-
ACTION INVOLVING THE FURNISHING OF ANY ASSISTANCE UNDER
THIS CHAPTER OR ANY EDUCATION AND TRAINING UNDER
CHAPTER 5;

-- "(II) THE RESPONSE OF THE UNITED STATES THERETO
AND THE RESULTS OF SUCH RESPONSE;

-- "(III) WHETHER, IN THE OPINION OF THE PRESIDENT,
NOTWITHSTANDING ANY SUCH POLICIES OR PRACTICES--

-- "(I) EXTRAORDINARY CIRCUMSTANCES EXIST WHICH
NECESSITATE A CONTINUATION OF SUCH ASSISTANCE OR
CONFIDENTIAL

PAGE 05 STATE 231123

EDUCATION AND TRAINING TRANSACTION, AND, IF SO, A
DESCRIPTION OF SUCH CIRCUMSTANCES AND THE EXTENT TO
WHICH SUCH ASSISTANCE OR EDUCATION AND TRAINING
TRANSACTION SHOULD BE CONTINUED (SUBJECT TO SUCH
CONDITIONS AS CONGRESS MAY IMPOSE UNDER THIS SECTION),
AND

-- "(II) ON ALL THE FACTS IT IS IN THE NATIONAL
INTEREST OF THE UNITED STATES TO CONTINUE SUCH
ASSISTANCE OR EDUCATION AND TRAINING TRANSACTION; AND

-- "(IV) SUCH OTHER INFORMATION AS SUCH COMMITTEE MAY
REQUEST.

-- "(B) IN THE EVENT A STATEMENT WITH RESPECT TO AN
ASSISTANCE OR TRAINING TRANSACTION IS REQUESTED PURSUANT
TO SUBPARAGRAPH (A) OF THIS PARAGRAPH BUT IS NOT
TRANSMITTED IN ACCORDANCE THEREWITH WITHIN 60 DAYS
AFTER RECEIPT OF SUCH REQUEST, SUCH ASSISTANCE OR
TRAINING TRANSACTION SHALL BE SUSPENDED UNLESS AND
UNTIL SUCH STATEMENT IS TRANSMITTED.

-- "(C)(I) IN THE EVENT A STATEMENT WITH RESPECT TO
AN ASSISTANCE OR TRAINING TRANSACTION IS TRANSMITTED
UNDER SUBPARAGRAPH (A) OF THIS PARAGRAPH, THE CONGRESS
MAY AT ANY TIME THEREAFTER ADOPT A JOINT RESOLUTION
TERMINATING OR RESTRICTING SUCH ASSISTANCE OR TRAINING
TRANSACTION.

-- "(II) ANY SUCH RESOLUTION SHALL BE CONSIDERED IN
THE SENATE IN ACCORDANCE WITH THE PROVISIONS OF SECTION
601(B) OF THE INTERNATIONAL SECURITY ASSISTANCE AND

ARMS EXPORT CONTROL ACT OF 1976.

-- "(III) THE TERM 'CERTIFICATION', AS USED IN SECTION 601 OF SUCH ACT, MEANS, FOR THE PURPOSES OF THIS PARAGRAPH, A STATEMENT TRANSMITTED UNDER SUBPARAGRAPH (A) OF THIS PARAGRAPH."

3. SECTION 302(B) AMENDS CHAPTER 1 OF THE FOREIGN MILITARY SALES ACT WITH PARALLEL PROVISIONS.

CONFIDENTIAL

PAGE 06 STATE 231123

4. DEFINITION. SECTION 7701(A)(30) OF THE INTERNAL REVENUE CODE OF 1957 DEFINES A U.S. PERSON AS A CITIZEN OR RESIDENT OF THE UNITED STATES, A DOMESTIC PARTNERSHIP, CORPORATION OR ANY ESTATE OR TRUST OTHER THAN FOREIGN ESTATES OR TRUSTS.

5. THE DEPARTMENT FULLY SUPPORTS THE POLICY OBJECTIVES OF THIS LEGISLATION TO PREVENT DISCRIMINATION BY FOREIGN GOVERNMENTS AGAINST AMERICANS FOR REASONS OF RACE, RELIGION, NATIONAL ORIGIN OR SEX. IN A STATEMENT NOVEMBER 20, 1975, PRESIDENT FORD COMMITTED THE USG TO GUARANTEE THE FUNDAMENTAL RIGHTS OF EVERY AMERICAN AND ANNOUNCED STEPS TO COMBAT PRACTICES OF FOREIGN GOVERNMENTS WHICH DISCRIMINATE AGAINST AMERICANS. (STATEMENT BEING POUCHED). THE IMPLICATIONS OF THE LEGISLATION FOR SPECIFIC COUNTRY PROGRAMS ARE UNDER STUDY. THE FOLLOWING IS INTENDED AS PRELIMINARY GUIDANCE FOR POSTS.

6. SUBSECTIONS (2)(A) AND (B) OF SECTION 302 PROHIBITS THE USG FROM TAKING DISCRIMINATORY PRACTICES OF FOREIGN GOVERNMENTS INTO ACCOUNT AND REQUIRE CONTRACT PARTICIPANTS IN MILITARY ASSISTANCE OR SALES TRANSACTIONS TO UNDERTAKE A WRITTEN COMMITMENT NOT TO ACQUIESCE IN EXCLUSIONARY PRACTICES OF FOREIGN GOVERNMENTS WITH RESPECT TO EMPLOYMENT OR PERSONNEL ASSIGNMENTS. SUBSECTION (3) REQUIRES THE PRESIDENT TO REPORT TO CONGRESS ALL INSTANCES OF DISCRIMINATION BASED ON RACE, RELIGION, NATIONAL ORIGIN OR SEX WHICH PREVENT A U.S. PERSON FROM PARTICIPATING IN SUCH TRANSACTIONS.

7. SUBSECTION (4) PROVIDES FOR AN ADDITIONAL REPORTING REQUIREMENT ON REQUEST OF THE HOUSE OR SENATE. SUCH REQUESTED REPORTS ARE TO BE TREATED UNDER SIMILAR STANDARDS AND PROCEDURES AS ARE APPLICABLE TO REPORTS REQUESTED UNDER THE HUMAN RIGHTS SECTION OF THE ACT DISCUSSED IN REFTEL. FAILURE TO PROVIDE A REQUESTED REPORT WITHIN SIXTY DAYS RESULTS IN A SUSPENSION OF THE TRANSACTION ABOUT WHICH A REPORT HAS BEEN REQUESTED, WHICH SUSPENSION REMAINS IN EFFECT UNTIL THE REPORT

IS SUBMITTED. SIMILARLY, WHEN A STATEMENT IS
CONFIDENTIAL

PAGE 07 STATE 231123

SUBMITTED CONGRESS MAY AT ANY TIME THEREAFTER TERMINATE
OR RESTRICT PERFORMANCE OF THE TRANSACTION IN QUESTION
BY JOINT RESOLUTION.

8. IN KEEPING WITH THIS LEGISLATION, POSTS SHOULD BE
ALERT FOR MANIFESTATIONS OF DISCRIMINATION DUE TO RACE,
RELIGION, NATIONAL ORIGIN OR SEX BY FOREIGN GOVERNMENTS
AGAINST U.S. PERSONS PARTICIPATING IN MILITARY ASSISTANCE
PROGRAMS AND PROMPTLY REPORT TO THE DEPARTMENT ANY
ALLEGATION OR INDICATION THAT A FOREIGN GOVERNMENT HAS
ENGAGED IN SUCH PRACTICES.

9. POSTS MAY HAVE BROUGHT TO THEIR ATTENTION EXAMPLES
OF SUCH DISCRIMINATION WHICH ARE REPRESENTED TO BE BASED
ON POLITICAL OR OTHER CRITERIA, NOT ON RACE, RELIGION,
NATIONAL ORIGIN OR SEX. PERSONS WHO MAKE SUCH CHARGES
MAY ALLEGE THAT COMPLAINED OF PRACTICES FALL WITHIN THE
FRAME OF REFERENCE OF THE ACT. IT IS ESSENTIAL THAT
POSTS PROMPTLY REPORT SUCH INDICATIONS OF DISCRIMINATION
NO MATTER HOW THE EXCLUSIONARY PRACTICES ARE REPRESENTED
BY THE U.S. PERSON OR JUSTIFIED BY THE FOREIGN GOVERNMENT

10. POSTS IN SECURITY ASSISTANCE RECIPIENT COUNTRIES
SHOULD BRING THE DISCRIMINATION PROVISIONS OF THE LAW TO
THE ATTENTION OF HOST GOVERNMENTS AT AN APPROPRIATE LEVEL
AND REPORT REACTIONS, IF ANY.

11. IN ADDITION TO ONGOING OPERATIONAL REPORTING RE-
QUIREMENT IN PARAGRAPH 8, DEPARTMENT REQUESTS POSTS IN
COUNTRIES WHERE U.S. HAS SECURITY ASSISTANCE PROGRAMS TO
MAKE ONE TIME REPORT ON DISCRIMINATORY OR EXCLUSIONARY
POLICIES AND PRACTICES OF HOST GOVERNMENTS WITH REGARD
TO U.S. PERSONS (PARA. 4) ENGAGED IN SECURITY ASSISTANCE
SALES OR TRANSACTIONS, IF ANY, ALONG WITH REPORT OF
HOST GOVERNMENT REACTIONS. CABLED REPORTS SHOULD BE
SUBMITTED BY SEPTEMBER 30. NEGATIVE REPORTS SHOULD
BE SUBMITTED BY SAME DATE IN EVENT NO SUCH POLICIES
OR PRACTICES OR ALLEGATIONS THEREOF EXIST. ROBINSON

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<< END OF DOCUMENT >>

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